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CHARLES ELMORE CROPLEY

# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1945

## No. 256

A. A. SEKT,
*Petitioner,*

vs.

THE JUSTICE'S COURT OF SAN RAFAEL TOWNSHIP, COUNTY OF MARIN, STATE OF CALIFORNIA,
*Respondent.*

## BRIEF FOR RESPONDENT.

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## Subject Index


| | Page |
|---|---|
| Opinion of the Court Below | 2 |
| Grounds on Which Jurisdiction of the Supreme Court of the United States Is Invoked | 2 |
| Argument | 2 |
| Jurisdiction in the Supreme Court of the United States not established | 3 |
| The decision of the California Supreme Court is a complete answer to the present petition | 6 |
| Conclusion | 7 |


## Table of Authorities Cited

### Cases


| | Pages |
|---|---|
| Lynch et al. v. People of New York, 293 U. S. 52, 55 S. Ct. 16 | 3 |
| Ong Chang Wing v. United States, 218 U. S. 272, 31 S. Ct. 15, 54 L. Ed. 1040 | 6 |


### Codes


| | |
|---|---|
| California Government Code, Section 9608 | 4, 6 |
| California Penal Code, Section 182 | 6 |

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*Respondent.*

## BRIEF FOR RESPONDENT.

*To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:*

In opposition to petitioner's application for a writ of certiorari to the Supreme Court of the State of California, the respondent respectfully submits the following:

**OPINION OF THE COURT BELOW.**

The opinion of the Supreme Court of California, rendered on April 27, 1945, is not yet reported in the California Reports. However, it is reported in Advance California Reports, Volume 26, page 215; also in the Transcript of Record herein, pages 39 to 51, inclusive.

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**GROUNDS ON WHICH JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES IS INVOKED.**

Petitioner invokes the jurisdiction of the Supreme Court of the United States under Article I, Section 9, paragraph 3 of the Constitution of the United States, and the 5th and 14th Amendments of the Constitution of the United States.

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**ARGUMENT.**

It is respectfully submitted that the foundation essential to cause this Court to take jurisdiction of this cause is not made out by the petition. Furthermore, the argument and authorities presented by petitioner to this Court are, in the main, a repetition of those addressed to the Supreme Court of the State of California and are fully and correctly determined by the said decision of that Court.

**JURISDICTION IN THE SUPREME COURT OF THE UNITED STATES NOT ESTABLISHED.**

It is essential to the jurisdiction of this Court in reviewing a decision of a court of a state that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the state having jurisdiction, but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it. Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction.

*Lynch et al. v. People of New York,* 293 U. S. 52, 55 S. Ct. 16 at page 17, and authorities there cited.

Respondent submits that neither the present petition and supporting brief nor the petition for a writ of prohibition and the supporting brief before the Supreme Court of California (Transcript of Record, pages 1-10, incl.) affirmatively show either (1) that a federal question was presented for decision to the Supreme Court of California, the highest Court of the state having jurisdiction, or, (2) that its decision of the federal question was necessary to the determination of the cause. While the decision does hold that enforcement of the judgment of the respondent

Court does not transgress upon the *ex post facto* provision of the Constitution, there is no affirmative showing that the decision of the Supreme Court of California as rendered could not have been given without deciding that point.

It does, however, affirmatively appear that the decision of the Supreme Court of California rests on two grounds, but not squarely upon either, and that the ground independent of a federal question is sufficient in itself to sustain the decision. Section 9608 of the Government Code of California, formerly section 329 of the Political Code of California, appears in the decision at page 41 of the Transcript of Record and is a general saving clause contained in the body of the laws of the State of California. The decision holds (Transcript of Record, page 44) that the term "information" as used in a statute includes "complaint", and vice versa; that the authorities sustain a holding that included within the word "information" are all misdemeanor prosecutions; that it is not at all inconceivable that the California Legislature, when it amended Political Code section 329 in the year 1881, intended to save all criminal prosecutions whether commenced by "complaint" or otherwise, and used the word "information" in its generic rather than its technical sense; that a liberal construction of the statute would lead to this result, and that there is authority that the section should be liberally construed.

As another and completely independent ground from the foregoing the decision holds (Transcript of

Record, pages 44-51, incl.) that the offense committed by petitioner may be punished under the law as it existed when the offense was committed for the reason that the amendment of section 182 of the Penal Code made subsequent to petitioner's conviction and pending his appeal was not a repeal of the type to bring into operation the common-law rule that the repeal of a criminal statute, without an express saving clause, operates to terminate all pending prosecutions. The decision (Transcript of Record, pages 48-51, incl.) treats of the legal effect of an amendatory act increasing the punishment prescribed by a penal statute in its relation to prosecutions not reduced to final judgment when the amendatory act goes into effect. The decision holds that where the later statute increases the punishment the Legislature has clearly demonstrated its intent that the act should be punished, and since the offender cannot be punished under the new law because of the *ex post facto* provision of the Constitution he will be held under the old law; that it is presumed from the very purpose of the amendment that the Legislature intended that all offenders should be punished, and a saving clause is implied; that the authorities upon this proposition reason that there is no constitutional prohibition against making the old statute applicable to offenses committed before its amendment; that whether the old law has been repealed or is saved for past offenders depends upon legislative intent; that by increasing the punishment the Legislature has clearly indicated that it intended that particular offense to be punished; that

to hold that the amendment operates to remit offenses not reduced to final judgment is technical and clearly violative of the legislative intent. (Citing *Ong Chang Wing v. United States,* 218 U. S. 272 (31 S. Ct. 15, 54 L. Ed. 1040), and other authorities.)

It is submitted, therefore, that this Court will not take jurisdiction of the cause.

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**THE DECISION OF THE CALIFORNIA SUPREME COURT IS A COMPLETE ANSWER TO THE PRESENT PETITION.**

The question involved on the merits, more accurately stated, is: Is the power of the respondent Court to execute its judgment of imprisonment upon the petitioner saved by said section 9608 of the Government Code, the general saving clause, or by properly implying a saving clause in the 1943 amendment of section 182 of the California Penal Code, the statute under which petitioner was convicted, the amendment occurring after conviction and pending appeal, the legal effect of the amendatory act being to provide increased punishment for violating the said section of the Penal Code?

This question is carefully and fully considered by the decision of the California Supreme Court, unanimously given by all of the members of that Court, and is a full and complete answer to the present petition, its argument and authorities.

## CONCLUSION.

Respondent prays that this Honorable Court deny the petition for a writ of certiorari.

Dated, San Rafael, California,
September 17, 1945.

Respectfully submitted,

ROBERT W. KENNY,
Attorney General of the State of California,
*Counsel for Respondent.*

HAROLD JOS. HALEY,
District Attorney of Marin County,
*Of Counsel for Respondent.*

*Due service and receipt of a copy of the within is hereby admitted*

*this.....day of September, 1945.*

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*Counsel for Petitioner.*